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On Behalf of Herself and  
All Others Similarly Situated*

(Additional Counsel on Signature Page)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

GINA PRIANO-KEYSER, on  
behalf of herself and all others  
similarly situated,

Plaintiff,

vs.

APPLE, INC.,

Defendant.

Case No.

**CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff, Gina Priano-Keyser (“Keyser” or “Plaintiff”), by and through her undersigned counsel, brings this action, on behalf of herself and all other persons similarly situated, against Defendant, Apple, Inc. (“Apple” or “Defendant”).

Plaintiff alleges the following based on information and belief, the investigation of counsel, and personal knowledge:

### **NATURE OF ACTION**

1. Plaintiff brings this action individually and on behalf of the proposed class (the “Class”), as more fully defined below, for the benefit and protection of all current and former owners of the Second Generation (“Series 1” and “Series 2”), and Third Generation (“Series 3”) models of the Apple Watch (collectively “Watch” or “Watches”) purchased in New Jersey. Plaintiff brings this class action on behalf of herself and all other similarly situated persons to obtain damages, restitution, as well as injunctive and other relief.

2. Apple started selling the Watches in April 2015, when it introduced its “First Generation” Apple Watch. Since April 2015, Defendant has released additional “generations” of the Apple Watch: the Series 1 and Series 2 Watches; and the Series 3 Watch; and the Series 4 Watch.

3. The Watches all contain the same defect and/or flaw, specifically, swelling lithium-ion (or “li-on”) batteries, which in turn cause Apple Watch screens to crack, shatter, or detach from the body of the Watch (the “Defect”), through no fault of the wearer, oftentimes only days or weeks after purchase. Upon information and belief, the Defect is caused by aging or otherwise faulty li-on batteries, or by defective internal components of the Watches that regulate temperature, electrical

currents, charging, and other mechanisms that could affect the Watches' li-on batteries.

4. Apple knew that the Watches were defective at or before the time it began selling them to the public. Furthermore, consumers complained to Apple about the Defect almost immediately after Apple released the Series 1, Series 2, and Series 3 Watches.

5. Apple began to sell its Series 1 and Series 2 Watches in September 2016. Very shortly thereafter, consumers who purchased the Series 1 and Series 2 Watches complained that the screens on their Series 1 and Series 2 Watches had cracked, shattered, or completely detached from the body of their Watches. These consumers took their defective Watches to Apple Stores, contacted Apple Support, and posted their complaints on the "Communities" forum on apple.com.

6. Apple has persistently denied any widespread issue with Series 1 or Series 2 Watches, but, in April 2017, Apple acknowledged a swelling battery defect in certain first-generation Watches and extended its Limited Warranty for qualifying first generation Watches from one year to three years. Similarly, in April 2018, Apple acknowledged a swelling battery defect in certain Series 2 Watches and extended its Limited Warranty for qualifying Series 2 Watches from one year to three years.<sup>1</sup>

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<sup>1</sup> <https://www.macrumors.com/2018/04/14/apple-watch-s2-swollen-battery-service-policy/>

7. Apple started selling its Series 3 Watch in September 2017. Shortly thereafter, consumers who purchased the Series 3 Watch reported that the screens on their Watches were cracking, shattering, or detaching from the body of their Watches, and lodged their complaints about the Series 3 Watches with Apple in the manners described above.

8. Since 2015, Apple has sold millions of Watches with the Defect throughout the United States, and either knew, or should have known, that the Watches contain the Defect and are not fit for their intended purpose. Nonetheless, Apple has actively concealed and failed to disclose the Defect to Plaintiff and Class members prior to, at, or after the time of purchase.

9. The Defect also poses a significant safety hazard to consumers, as it has caused a number of putative Class members to suffer cuts and burns in connection with the screens cracking, shattering and/or detaching from the body of the Watches. Notwithstanding the safety issues with the Watches, Apple did not disclose the defect to consumers.

10. Further, Apple's conduct, when confronted with the Defect, indicates that its internal policy is to deny the existence of the Defect, claim the Defect is the result of "accidental damage" caused by consumers, and then refuse to honor its Limited Warranty on those grounds. Consumers that are refused coverage under the

Limited Warranty are forced to incur the significant expense of repairing or replacing their defective Watches.

11. Apple knew that purchasers of the Watches would reasonably expect the screens to function in a predictable and expected manner during normal use, and Plaintiff and other consumers have precisely that expectation. Apple was also aware that purchasers of the Watches would reasonably expect that they would not pose a safety risk, and Plaintiff and other consumers have that expectation. Further, Apple knew that purchasers of the Watches would reasonably expect that the Defect—when it manifested itself—would be covered under its Limited Warranty, and again, Plaintiff and other consumers did have that expectation.

12. Had Plaintiff and other Class members known about the Defect at the time of purchase, they would not have bought the Watches, or would have paid less for them.

13. As a result of the Defect in the Watches and monetary costs associated with repair, replacement, or lost use of the Watches, Plaintiff and Class members have suffered injury in fact, incurred ascertainable loss and damages, and have otherwise been harmed by Apple's conduct.

14. This action is brought to remedy violations of New Jersey consumer protection law in connection with Apple's misconduct, including its conscious effort to conceal material facts concerning the Defect during the distribution, marketing,

sale and advertisement of the Watches, as well the consumer and warranty as a result of Apple's conduct performed with respect to the Watches.

15. Plaintiff and the Class allege violations of the New Jersey Consumer Fraud Act N.J.S.A. § 56:8-1, *et seq.*, ("CFA"), and breach of express and implied warranty as a result of Apple's conduct.

### **PARTIES**

16. Plaintiff is, and at all times relevant to this action has been, a citizen of Union County, New Jersey. On or about October 15, 2017, Plaintiff purchased online at [www.kohls.com](http://www.kohls.com), a new Series 3 Apple Watch for \$329.00 plus tax, and picked it up on October 21, 2017 from Kohl's, an authorized Apple dealer, at its store in Watchung, New Jersey.

17. Apple is a United States corporation that designs, manufactures, markets, distributes, warrants, and sells Apple Watches in the United States and numerous other locations worldwide, including throughout New Jersey.

18. Apple is, and at all times relevant to this action has been, a California corporation that is headquartered and maintains its principal place of business in Cupertino, California. Thus, Apple is a citizen of California.

### **JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(d)(2) because, upon information and belief, the matter in controversy exceeds \$5,000,000,

excluding interest and costs, and this is a class action in which certain of the Class members and Defendant are citizens of different states.

20. This Court has personal jurisdiction over Apple because Apple is authorized to do business, and currently does business, in this state.

21. Venue is proper in this judicial district under 28 U.S.C. § 1391, because Plaintiff is a resident of this judicial district, and many of the acts complained of in this Complaint emanated from, or took place in, this district.

### **FACTUAL ALLEGATIONS**

22. This action is brought against Apple on behalf of Plaintiff and all current and former owners of the Watches.

23. Apple designed, manufactured, distributed, marketed, warranted, and sold the Watches. Upon information and belief, Apple has sold—directly or indirectly through authorized stores and other retail outlets—millions of Watches in New Jersey and nationwide.

#### **Watches Manufactured, Advertised, and Sold by Apple**

24. Apple began selling its Watches in April 2015, when it introduced the First Generation Apple Watch.

25. Starting in September 2016, Apple discontinued the manufacture of the First Generation Apple Watch and began to produce and sell both the Series 1 and Series 2 Watches. Apple announced in September 2018 that it would no longer sell

the Series 1 Watch, and Apple had already discontinued the manufacture of the Series 2 Watch in September 2017.

26. The Series 1 Watches only used aluminum cases with “Ion-X glass” screens, but consumers were able to choose a 38mm case or a 42mm case. Initially, prices for Series 1 watches varied between \$269 and \$299—depending on the size chosen—but dropped following the release of new versions of the Watch.

27. Upon information and belief, purchasers of the Series 2 Watch could choose various models, with either a 38mm or 42mm case. Depending on the model, Series 2 Watches had aluminum, ceramic, or stainless-steel cases, and either Ion-X glass or Sapphire crystal screens. Again, dependent on the model selected, prices for the Series 2 watch ranged from \$269 to \$1,249.

28. In September 2017, Apple released the Series 3 Watch. Initially, there were several models of the Series 3. Depending on the model, Series 3 Watches have aluminum, ceramic, or stainless-steel cases, and either Ion-X glass or Sapphire crystal screens. Consumers can select between a 38mm or 42mm case. Depending on the model, prices for the Series 3 varied between \$329 and \$1,399.

29. According to comparisons of Watches that are no longer available on its website, Apple has noted that Apple Watch Series 1 offered the same features as the 1st generation models, except for a faster processor. Apple Watch Series 2 included the same, faster processor along with built-in GPS, increased water



resistance and a brighter display. <https://discussions.apple.com/thread/7704382>. With the Series 3, Apple used LTE, and added an eSIM as well as a new W2 chip to boost performance.

30. In September 2018, Apple released the Series 4 Watch. There are several models of the Series 4 Watch, and, depending on the model, prices for the Series 4 vary between \$399 and \$1,499.

31. From their inception, Apple has advertised the Watches as “smart watches,” with functions well beyond simply telling the time. Consumers can, *inter alia*, download and in apps, receive and send text messages, track their location, and receive phone calls.<sup>2</sup>

32. More importantly, however, Apple has consistently marketed the Watches as activity-oriented devices that consumers can take anywhere and use for any practical purpose. Advertisements for the Series 1 Watch that had appeared on Apple’s website invited consumers to: “Track your activity. Measure your workouts. Monitor your health.”<sup>3</sup> Consumers were encouraged to pick from a variety of workouts and Apple promised that the Watch would accurately measure every movement.

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<sup>2</sup> <https://www.apple.com/watch/>.

<sup>3</sup> As the Series 1 and Series 2 watches are no longer sold by Apple, the advertisements have been removed from Apple’s website.

33. Similarly, Apple advertised its Series 2 watch as a waterproof device capable of withstanding depths of up to 50 meters and that one included fitness and health capabilities. Likewise, the Series 3 is advertised as the “Ultimate Sports Watch” that can track indoor and outdoor activities and is also water resistant up to 50 meters.<sup>4</sup>

34. Advertising campaigns for Series 1, Series 2, and Series 3 Watches have shown, and continue to show, Apple Watch-wearers participating in a variety of athletic activities from running, hiking, and climbing, to dancing, swimming, and surfing.<sup>5</sup>

35. Based on these advertisements and the high purchase price for Apple Watches, consumers who purchase Apple Watches reasonably expect well-made, durable devices that can consistently perform multiple functions and withstand a variety of conditions without issue. Consumers also expect that they will be able to use the Watches without experiencing a safety hazard.

### **The Limited Warranty for Apple Watches**

36. Apple provides a Limited Warranty for all purchasers of an Apple Watch, which covers the “product against manufacturing defects beginning on the

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<sup>4</sup> <https://www.apple.com/apple-watch-series-3/>.

<sup>5</sup> <https://www.youtube.com/watch?v=1b6W3ltMRN0>; <https://www.youtube.com/watch?v=kXySS9j4Ryg>; <https://www.apple.com/watch/films/>.

original purchase date.” The Limited Warranty is one year for most models but is two years for the Hermès and Edition models.<sup>6</sup>

37. Upon information and belief, apart from distinctions in length, the terms of Apple’s Limited Warranty are the same for all Apple Watch models and, in relevant part, provides:

“WHAT IS COVERED BY THIS WARRANTY?”

Apple Inc. of One Apple Park Way, Cupertino, California, U.S.A. 95014 (“Apple”) warrants the Apple-branded hardware product and Apple-branded accessories contained in the original packaging (“Apple Product”) against defects in materials and workmanship when used normally in accordance with Apple’s published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the end-user purchaser (“Warranty Period”). Apple’s published guidelines include but are not limited to information contained in technical specifications, user manuals and service communications.

WHAT IS NOT COVERED BY THIS WARRANTY?

This Warranty does not apply to any non-Apple branded hardware products or any software, even if packaged or sold with Apple hardware. This does not affect your rights under applicable consumer law. Manufacturers, suppliers, or publishers, other than Apple, may provide their own warranties to you – please contact them for further information. Software distributed by Apple with or without the Apple brand (including, but not limited to system software) is not covered by this Warranty. Please refer to the licensing agreement accompanying the software for details of your rights with respect to its use. Apple does not warrant that the operation of the Apple Product will be uninterrupted or error-free. Apple is not responsible for damage arising from failure to follow instructions relating to the Apple Product’s use.

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<sup>6</sup> <https://support.apple.com/watch/repair/service>.

**This Warranty does not apply: (a) to consumable parts, such as batteries or protective coatings that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship; (b) to cosmetic damage, including but not limited to scratches, dents and broken plastic on ports unless failure has occurred due to a defect in materials or workmanship; (c) to damage caused by use with a third party component or product that does not meet the Apple Product’s specifications (Apple Product specifications are available at [www.apple.com](http://www.apple.com) under the technical specifications for each product and also available in stores); (d) to damage caused by accident, abuse, misuse, fire, earthquake or other external cause; (e) to damage caused by operating the Apple Product outside Apple’s published guidelines; (f) to damage caused by service (including upgrades and expansions) performed by anyone who is not a representative of Apple or an Apple Authorized Service Provider (“AASP”); (g) to an Apple Product that has been modified to alter functionality or capability without the written permission of Apple; (h) to defects caused by normal wear and tear or otherwise due to the normal aging of the Apple Product, (i) if any serial number has been removed or defaced from the Apple Product, or (j) if Apple receives information from relevant public authorities that the product has been stolen or if you are unable to deactivate passcode-enabled or other security measures designed to prevent unauthorized access to the Apple Product, and you cannot prove in any way that you are the authorized user of the product (eg. by presenting proof of purchase).”<sup>7</sup>**

38. Apple’s website indicates that an Apple Watch is considered “out of warranty” when it is: (1) “beyond the eligible warranty term”; (2) “has an issue that’s not covered under warranty or consumer law, such as accidental damage”; or (3) “service isn’t covered by an AppleCare plan.”<sup>8</sup>

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<sup>7</sup> <https://www.apple.com/legal/warranty/products/warranty-us.html> (emphasis in original).

<sup>8</sup> <https://support.apple.com/watch/repair/service>.

39. If an Apple Watch battery “has a manufacturing defect and it’s covered by the Apple Limited Warranty, AppleCare+, or consumer law,” Apple will service the watch “at no additional cost.”<sup>9</sup>

40. If an Apple Watch screen “breaks accidentally, [consumers] can replace [the] Apple Watch for an out-of-warranty fee.” Purportedly, a “manufacturing defect” is covered “by the Apple warranty and consumer law.”<sup>10</sup>

### **The Defect in Series 1, Series 2, and Series 3 Watches**

41. Shortly after the release of the First Generation Watches, consumers began to complain that the screens were “popping off,” “falling off,” or otherwise detaching from the body of the Watch. In all instances, consumers made clear that these occurrences were not the result of damage or misuse on their part, noting instead that the Defect manifested itself suddenly and unexpectedly.

42. In April 2017, at or around its second birthday, Apple extended its Limited Warranty for its First Generation Watches to three years after the original date of purchase, in order to address the issue.<sup>11</sup> Thus, prior to bringing the Series 1, 2 and 3 Watches to market, Apple was keenly aware of the problem with the Watches.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.macrumors.com/2017/04/28/original-apple-watch-repairs-extended/>

43. Similarly, shortly after the release of the Series 1 and Series 2 Watches in September 2016, consumers also had begun to report that the screens were detaching from the body of their watches. Purchasers of the Series 1 and Series 2 Watches also reported the appearance of hairline cracks running vertically and horizontally along the perimeter of their Watch screens, while others have reported that their screens shattered. In all instances, consumers clarified that these occurrences were not the result of damage or misuse on their part, noting the Defect manifested itself suddenly and unexpectedly.

44. In April 2018, Apple extended its Limited Warranty from one year to three years for all 42mm-sized Series 2 Models with swollen batteries. Apple did not admit a general defect in Series 2 Watches and has refused to extend the Limited Warranty to defective Watches that it believes did not contain a swollen battery.<sup>12</sup> Further, the policy was not initially publicly announced and there was no procedure to obtain a refund for repairs made to the Series 2 Watches prior to the institution of the policy.

45. Shortly after the release of the Series 3 Watch, consumers began to report that the screens of their Watches were detaching, cracking, or shattering. In all instances, consumers clarified that these occurrences were not the result of

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<sup>12</sup> <https://www.macrumors.com/2018/04/14/apple-watch-s2-swollen-battery-service-policy/>

damage or misuse on their part, noting the Defect manifested itself suddenly and unexpectedly.

46. Upon information and belief, these Watches—and all Watches—were/are affected by swollen batteries, an issue caused by aging or defective li-on batteries, or by defective mechanisms inside the Watches that regulate a variety of functions including watch and battery temperature, electrical currents, and charging. Failure in either case causes one or several of the “cells” within the li-on battery to fail and then expand (as occurs to all li-on batteries that fail). This expansion puts upward pressure on the weakest point in the affected Watch: the screen. Depending on a number of factors—from rapidity of the li-on’s expansion, the severity of that expansion, the strength of the Watch-screen’s adhesive, or strength of the Watch screen itself—a swelling Watch battery can cause the Watch’s screen to crack along the perimeter, shatter, or fully detach from the body of the Watch.

47. Upon information and belief, the Defect described above is present in every series, model and size of the Watches. The Defect also poses a risk to consumers, and several putative Class members have reported that they have suffered scratches and burns due to the sudden manifestation of the Defect.

### **Experiences of Plaintiff and the Class**

48. Prior to purchasing the Watch, Plaintiff’s daughter examined promotional content regarding Series 3 Watches and read reviews on Amazon.com

and Google.com and watched YouTube videos of reviewers. She was aware of the content of Apple's website.

49. Plaintiff purchased a Series 3 (GPS), 38mm Gold, Aluminum Case Apple Watch on or about October 15, 2017.

50. On or around July 4, 2018, while in the charger, the screen on the Watch unexpectedly detached from the Watch's body. When Plaintiff looked at the Watch, it had a long, deep, jagged crack that spans the length of the bottom section of the screen. Plaintiff's daughter (who wore the watch) pushed the screen back into place, but the Watch was unusable.







51. In the following weeks, Plaintiff contacted Apple. Plaintiff attended a Genius bar appointment on August 10, 2017, where she was told the Watch would need to be sent to the Apple depot for screening, diagnosis and repair.

52. On August 13, 2017, Plaintiff was informed that Apple would not repair the Watch under Apple's Warranty.

53. Apple not only refused to cover the repair under Apple's Limited Warranty, but Apple quoted Plaintiff a price of \$229 to repair the Watch. Plaintiff

declined this offer and picked up the Watch, which has not been usable since that time.

54. If Plaintiff decides to have the repair done, she (as do other members of the Class) would still run the risk of future harm as the repaired Watch also would be prone to the same Defect described herein.

55. At all pertinent times, the Watch was maintained as recommended by Apple. The Watch was in like-new condition, with no damage to on the Watch.

56. Plaintiff's experience is identical to the experiences of thousands of Apple Watch owners. The Internet, and in particular Apple's "Communities" forum, is replete with complaints about the Defect and Apple's persistent refusal to cover the Defect under its Limited Warranty. Apple's response in each case is the same: it implicitly or expressly (and improperly) blames the consumer for the Defect and refuses to cover repairs under the Limited Warranty or otherwise. The quotes below from Apple's "Communities" forum are representative of consumers' experiences:

- hackrill, posted August 18, 2016:

My iWatch face fell out and i cannot access the password.  
(URL: <https://discussions.apple.com/thread/7641542>)

- Mariep999, posted August 19, 2016:

I had the same issue last night. I was doing an exercise class and had my watch on then I heard a clicking noise. I looked and the watch face had popped out and was hanging by a cable. I wasn't doing anything strenuous at that point. I had worn my watch exercising numerous times and it's been fine. What would cause watch face to pop out? I've had

my watch for over a year so it will be out of warranty. I've no other issues with it apart from this. I look after my watch and I've never had it wet.

(URL: <https://discussions.apple.com/thread/7641542>)

- gbussey, posted August 31, 2016:

I have seen lots of discussions about the back of the watch separating from the body but can't find any discussions on the FRONT of the watch detaching. At first I thought the remarks about the BACK detaching referenced my issue but as I read more I discovered that what people were describing. Was the back part where charger attaches separating from watch body. My history has been the glass front of the watch detaching. Has happened three times. Anybody else with similar problem? Ever discover the cause? Thanks

(URL: <https://discussions.apple.com/thread/7652700>)

- Black Belt, posted February 18, 2017:

What can be done to reattach the watch face glass? Can the genius do it? Is it a recall defect? I wasn't doing anything to it and I'm not rough at all. It just decided to detach tonight.

(URL: <https://discussions.apple.com/thread/7867965>)

- Mightymackem (Series 2), posted May 14, 2017:

My series 2 has just done the exact same thing! Only had it a month and a half. I'm armed forces so I use it for running etc as it's designed for...fine one minute, next it's decided to be a jack in the box and is hanging by the ribbon. Cracked all around the face.

(URL: <https://discussions.apple.com/thread/7641542>)

- GYan1, posted August 3, 2017:

Watching TV and POP! Screen shattered on a 5 month old watch. I went to my Genius Bar appointment today and they said it had to be my fault and not covered. \$229 to fix. I am VERY disappointed and will be contacting corporate, and if no resolution perhaps the news media.

(URL: <https://discussions.apple.com/thread/7889589>)

- Mercadoj (Series 1 Stainless Steel), posted August 16, 2017:

I purchased my Apple Watch (stainless steel) in June of 2015. Being a near \$800 Watch, saying it's been well cared for is an understatement. The Watch has ... no scratches or dents, never been dropped, or exposed to water. While working at my desk at work I noticed the screen dangling from the Watch housing. I took the Watch to a local Apple Store, and they sent it to Apple for further review. After a couple of days they called and refused to fix the Watch because they claimed the screen fell off because of "accidental damage" and the device was "out of warranty."

(URL: <https://discussions.apple.com/thread/8041416>)

- Ankush Narula (Series 1 Stainless Steel), posted September 17, 2017:

I have the same issue with my first generation (stainless steel) Apple Watch. One day the screen just popped off while I was walking and now it hangs by the ribbon cable. I can press the screen and the body together but the screen doesn't remain attached.

I took it to the Apple Store this past Friday and the Genius Bar confirmed that there is no physical damage. However, they told me that my AppleCare warranty is expired and my device is not covered. I mentioned that I've read Apple has extended the warranty for first generation Apple Watch to 3 years. They said the extended warranty only applies to the Apple Watch Sport – not to the Apple Watch or Apple Watch Edition. Out of warranty repair cost is \$249.

Very disappointing for a \$700 device for someone who over 20 years has spent tens of thousands on Apple products and thousands on AppleCare.

(URL: <https://discussions.apple.com/thread/8041416>)

- Snetmail (Series 2 Nike Edition), posted October 14, 2017:

This is exactly the same situation I had. I was sitting at my desk at work and noticed that the screen was suddenly detached. I have only had my watch (Nike version - 2nd generation I think - 38mm) for 4 months and I have never gotten it wet or dropped it. I was shocked when Apple sent it for repair and I was told it was found to have been accidentally

damaged. There are not even any scratches on it. I would think there could be accidental damage in simply shipping a product with out a connected screen if that is the case. I don't typically buy Apple care because I am careful with my devices and the devices are usually of good quality hardware-wise. I am shocked and upset about this. It may be the end of my relationship with Apple products. This is unacceptable.

(URL: <https://discussions.apple.com/thread/8041416>)

- markfromkaiser, posted October 14, 2017:

My wife had this same problem. No abuse, didn't drop, didn't hit, nothing. She was sitting at a table having lunch with her fellow coworkers and they heard something shatter. They were looking for a lightbulb, but all the lights were OK. She looked down at her watch and the screen had completely shattered with shards on the table. Thankfully they were all done eating. Spent four sessions on chat trying to resolve the issue and it would time out before being resolved. Finally called and talked to a senior advisor. They sent a box and shipped it to apple. They said it was damaged/abused. IT WAS NOT. This watch is only four months old. Got it for mothers day. At this point, not real happy with Apple. I have 3 iPhones, a MacBook pro, and have hawked apple products to friends and family, most of which have purchased and been happy. It is good to see we are not alone with this issue.

(URL: <https://discussions.apple.com/thread/7889589>)

markfromkaiser, Posted October 22, 2017:

Well, bad news for us. So far anyway. Got on chat with yet another advisor and they were all but convinced it was a swollen battery. Sent pics and everything. Then they get with a senior advisor. Since it had already been looked at by some technician, they said they would not replace it. So, basically, they are calling us liars in that we said there was no abuse or damage to the watch. They said it was damaged.

It also seems they don't have a clear policy on when these watches do shatter. Some get a new watch, others don't. Good luck! The watch cost \$350. Now they want \$229 or something to send a refurbished watch. That's about \$580 for a four month old watch. Incredible. IF she

had abused or damaged it, then yeah, have to suck it up and either pitch it or get it repaired. But she didn't. Thinking I'm tasting sour apple.  
(URL: <https://discussions.apple.com/thread/7889589>)

- Thony0415 (Series 1), posted December 13, 2017:

Same thing happened with my apple watch series1. I was just standing in the garden on a sunny day then suddenly I felt something has popped from my wrist. Then I realised the screen is shattered. I called up the apple centre and they keep on telling me they have no similar cases from the past and make it appear that it might have been caused by accident. Now I can see that Im not alone. Apple should just gracefully admit that something is terribly wrong with the product than make us all appear liars!  
(URL: <https://discussions.apple.com/thread/7889589>)

- Traceyhincks (Series 3), posted January 3, 2018:

My series 3 watch screen cracked right around the edge and the face popped out...I was sitting at my desk, not moving didn't bang it on anything...I'd had the watch for one week...My husband contacted apple, they said send it to the repairer, we are not close to an Apple Store...So end result from Apple is that it was my fault and it's going to cost \$385 to fix it...After spending \$600 to buy it, and me wearing it for a week, it's turning into a very expensive watch...They have flatly refused to warrant it....  
(URL: <https://discussions.apple.com/thread/8223086?page=41>)

- THHV, posted March 28, 2018:

My watch was fine the night before but after charging it for the night, when I put it back on there was a continuous hairline crack that wrapped around 2 sides of the screen on the bevel. I'm positive that it happened when charging/ off the wrist as its very noticeable when swiping on the screen. My finger picks up the scratch when sliding my finger over it. I noticed it the second I put the watch on. Apple Store advised that it was covered under warranty as it was likely related to a swollen battery or other factory defect. They sent it for repair under warranty but the repair facility wants over \$250 to fix the screen because it is cracked &



considered physical damage... THIS IS WHY I SENT IT IN. Obviously it's cracked, the Apple Store saw this, verified it and advised it was covered under warranty. There are zero signs of wear and tear. No case damage, scratched, etc.

(URL: <https://discussions.apple.com/thread/8336776?page=2>)

- JHi47644 (Series 2), posted March 13, 2018:

My wife had the same problem on the series 2 watch. Sat in the car, went to check her watch and noticed it had cracked around all 4 edges and just hanging off from the top. Logged a support call and sent them photos and the watch to be told I need to pay for it to be repaired because they found another crack coming from one of the cracks on the edge down to the case.....I've tried 3 time for them to accept that we have not dropped it and I can't see a crack in the original photos but they won't accept it.

My point to them was that given its my word against theirs, if it had been knocked on the inside edge of the watch without her knowing (some how) why would it radiate all the way around the screen and what type of force would that take, its supposed to be a sports watch! Looks like I'm left paying to get the watch replaced but I won't go near Apple again, after being a customer for many, many years. They have no complaints procedure and no way to escalate.

(URL: <https://discussions.apple.com/thread/8223086?page=41>)

- William YZF-R1, posted Sep 25, 2017:

Same think happened to me too - 18 month old 42mm Milanese loop. I have hardly worn the watch but yesterday when I was driving I felt something catching on my sleeve and looked down to see the watch screen hanging on by its ribbon cable.

Incidentally the watch became very hot on my wrist at the same time so I took it off and laid it on the floor of the car.

I am reading of swollen batteries causing the screen to pop off and coincidentally perhaps I upgraded to OS4 a couple of days ago which seems to stressing the battery according to some posts.

Sadly it is out of warranty but I genuinely consider this is a manufacturing fault and I fully expected my Apple watch to last considerably longer.

(URL: <https://discussions.apple.com/thread/7867965>)

- Njsurfmaster (Series 3), posted March 15, 2018:

I have the same problem with my Series 3 watch. I purchased it in September 2017. The screen around the entire edge cracked and separated. It happened while sitting in a chair watching TV. I didn't bang it in any way. No visible scratches or any kind of damage on the watch...I took it to an Apple Store and they said it looked like a swollen battery and wrote it up that way. Apple denied it and is charging me \$289+tax to repair...There is no doubt in my mind there is a problem with these watches.

(URL: <https://discussions.apple.com/thread/8223086?page=41>)

57. As the above posts demonstrate, owners of defective Apple Watches are faced with unenviable and expensive options: They can pay over \$200 to repair an already expensive Watch; they can purchase AppleCare+ for at least \$49 (and then pay an additional \$69 service fee for each incident);<sup>13</sup> they can purchase a new Apple Watch; or, like Plaintiff here, they can simply not use their Watch. Under any option, consumers must either pay more for the continued use of an already expensive Watch or be deprived of its use entirely. Moreover, if the consumer repairs or purchases a new Watch, he or she would still run the risk of future harm as the new or repaired Watch would continue to be prone to the same Defect described herein.

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<sup>13</sup> <https://www.apple.com/shop/product/S5398LL/A/applecure-for-apple-watch-and-apple-watch-nike>.



58. The pervasiveness of the Defect is such that owners of Apple Watches with detached screens may purchase, from various vendors, adhesives designed and marketed specifically to reattach Apple Watch screens.<sup>14</sup>

### **Apple's Knowledge of the Defect**

59. Although Apple has acknowledged a swollen battery issue in certain First Generation Watches and Series 2 Watches, it has flatly refused to acknowledge the existence of the Defect, even though the Defect is present in every series of Watches, including the Series 3 purchased by Plaintiff here. Nevertheless, consumers' complaints at Apple Stores, to Apple Support, and online leave no doubt that Apple is fully aware of the Defect. Even still, Apple has provided no notice to consumers.

60. Apple has failed to disclose the Defect to consumers, and, when presented with defective Watches, has insisted that the damage caused by the Defect is the fault of consumers and has refused to repair or replace their Watches free of charge, as required under the Limited Warranty. These are material facts about which consumers would reasonably expect to receive notice. Had Plaintiff and Class members known about the Defect and, further, that Apple would refuse to remedy

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<sup>14</sup> <https://www.amazon.com/Front-Sticker-Apple-Waterproof-Adhesive/dp/B01LQ34KGE>; <https://www.ifixit.com/Guide/Apple+Watch+Adhesive+Replacement/41083>.

the Defect under its Limited Warranty, they would not have bought the Watches, or would have paid less to purchase them.

61. Although aware of the Defect in the Watches, Apple has actively concealed the Defect from Plaintiff and the Class at the time of purchase and every point thereafter. Specifically, Apple has engaged in the following acts and omissions:

- a. failed to disclose, prior to, at and after the time of purchase and attempts to repair, any and all known material facts or material defects associated with the Watches, including the associated repair costs, as well as the Defect in the Watches that exists during their normal and/or expected range of operation;
- b. failed to disclose prior to, at, and after the time of purchase that the Watches were not in good working order, were defective, and were not fit for their intended purposes;
- c. failed to disclose or actively concealed the fact that the Watches were and are defective, despite the fact that Apple learned of such defects through testing, repair requests, and consumer complaints at or immediately after Apple began selling the Watches; and
- d. failed to disclose that the Defect poses significant safety concerns.

62. When Plaintiff and Class members have visited Apple Stores and/or contacted Apple Support to complain about the Defect, Apple has concealed the true nature of the Defect by failing to acknowledge the Defect, failing to make free repairs under its Limited Warranty, and insisting that the Defect is merely the result of Plaintiff's and the Class's carelessness.

63. Apple has not recalled the Watches to repair the Defect and has not offered its customers a suitable repair or replacement free of charge. Indeed, Apple's conduct to this point gives every indication that its internal policy is to deny the existence of a Defect and to instead claim the Defect is the result of "accidental damage" caused by the consumer, and thus not covered by its Limited Warranty.

64. As a result of the issues caused by the Defect during foreseeable normal use, owners of the Watches are unable to use them as they were intended and expected to be used.

65. A reasonable consumer expects and assumes that, when he/she purchases an Apple Watch purportedly designed for active wear and use, the Watch screen will not spontaneously crack, detach, or shatter when it is being used within its normal and/or expected range of operation. A reasonable consumer also expects that the Watch will not be a safety hazard.

66. In addition to repair or replacement costs associated with remedying the Defect, Apple has a duty to disclose the defective nature of the Watches because Apple has exclusive knowledge of or access to all of the material information and has known these facts were not reasonably discoverable by Plaintiff or the Class members, and because Apple has actively concealed the Defect from its consumers.

### **CLASS ACTION ALLEGATIONS**

67. Plaintiff requests this Court certify the following Class under Rule 23 of the Federal Rules of Civil Procedure:

All residents of New Jersey who are current and former consumer owners of all models and sizes of Series 1, Series 2, and Series 3 Apple Watches purchased in New Jersey.

68. Plaintiff reserves the right to amend the Class definition and, if deemed appropriate, to divide the class into subclasses.

69. This action is brought and may properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

a. **Numerosity:** The potential members of the Class as defined are so numerous that joinder of all the Class members is impracticable.

b. **Commonality:** There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, but are not limited to:

- i. Whether the Defect exists;
- ii. Whether and when Apple became aware of the Defect;
- iii. Whether Apple sold the Watches knowing of the Defect;

- iv. Whether the Defect poses a significant safety risk;
  - v. Whether a reasonable consumer would consider the Defect and/or its consequences to be material;
  - vi. Whether Apple concealed the nature of the Defect in the Watches from Plaintiff and members of the Class;
  - vii. Whether Apple had and applied an internal policy of refusing to honor the Limited Warranty on the grounds that the Defect did not exist and that Plaintiff and members of the Class caused the damage to their Watches;
  - viii. Whether Apple's conduct violated the CFA;
  - ix. Whether Apple's conduct breached the express warranties; and
  - x. Whether, as a result of Apple's conduct, Plaintiff and members of the Class are entitled to damages, restitution, equitable relief, and/or other damages and relief, and, if so, the amount and nature of such relief.
- c. **Typicality:** Plaintiff's claims are typical of the claims of the Class.
- Apple's common course of conduct in violation of law as alleged herein has caused Plaintiff and Class members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and coextensive with the claims of the Class.
- d. **Adequacy of Representation:** Plaintiff is a member of the Class, does not have any conflicts of interest with other proposed Class members, and will prosecute the case vigorously on behalf of the Class. Counsel representing Plaintiff is competent and experienced

in litigating large class actions in New Jersey and throughout the United States, including those Plaintiff will fairly and adequately represent and protect the interests of Class members.

- e. **Superiority of a Class Action:** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class member has been damaged and is entitled to recovery by reason of Apple's improper practices. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions economically feasible. Individualized litigation increases the delay and expense to all parties and the Court. By contrast, class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

70. In the alternative, the Class may be certified because the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudication and, in turn, would establish incompatible standards of conduct for Apple.

71. The nature of notice to the proposed Class is contemplated to be by direct mail upon certification of the Class or, if such notice is not practicable, by the best notice practicable under the circumstances, including email, publication in major newspapers, and/or on the Internet.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Violations of New Jersey Consumer Fraud Act (“CFA”) N.J.S.A. § 56:8-1, *et seq.***

72. Plaintiff realleges and incorporates each allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

73. The CFA was enacted and designed to protect consumers against unfair, deceptive and fraudulent business practices. N.J. Stat. Ann. §56:8-1, *et seq.*

74. N.J. Stat. Ann. §56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has

in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice . . . .

75. Plaintiff, other members of the Class, and Defendant are “persons” within the meaning of the CFA.

76. The Watches are “merchandise” within the meaning of the CFA, and Plaintiff and other members of the Class are “consumers” within the meaning of the CFA and, thus, are entitled to the statutory remedies made available in the CFA.

77. Apple, through its marketing sale of Defective Watches and refusal to repair the Watches under its Limited Warranty, used unconscionable commercial practices, deception, fraud, concealment, false promises, and misrepresentations, in violation of the CFA.

78. Apple also knowingly concealed, suppressed, and consciously omitted material facts to Plaintiffs and other Class members regarding the Watches.

79. These acts and omissions directly and proximately caused Plaintiffs and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, money spent purchasing the Watches and other out-of-pocket expenses, together with appropriate penalties, including treble damages, attorneys’ fees, and costs of suit.

80. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.



**COUNT II**  
**Breach of Express Warranty**

81. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set forth herein.

82. Apple provided a one-year written Limited Warranty to consumers in connection with every sale of an Apple Watch (this warranty period is two years for Hermès and Edition models). Under the terms of the Limited Warranty, Apple warranted “against defects in materials and workmanship” in the Apple Watch “when used normally in accordance with Apple’s published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the end-user purchaser. . . .”

83. Apple’s Limited Warranty provides that if the warranty is triggered during the warranty period, Apple will either: “(i) repair the Apple Product using new or previously used parts that are equivalent to new in performance and reliability, (ii) replace the Apple Product with the same model (or with your consent a product that has similar functionality) formed from new and/or previously used parts that are equivalent to new in performance and reliability, or (iii) exchange the Apple Product for a refund of your purchase price.”<sup>15</sup>

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<sup>15</sup> <https://www.apple.com/legal/warranty/products/warranty-us.html>.

84. Notwithstanding the Limited Warranty, Plaintiff and the Class's Watches were defective at the time of sale. The defect is inherent to the Watches and gives the Watches a substantial propensity to fail—rendering the Watches unusable and unsuitable for their primary purpose—and existed at all relevant times.

85. The Limited Warranty was included with every Watch and was also made available on Apple's website.

86. Plaintiff and Class members used their Watches in a manner consistent with the operating instructions prior to manifestation of the Defect.

87. Apple was on actual notice of the Defect before selling the Watches to Plaintiff and Class members and received timely notice of the breaches they experienced. Despite reasonable opportunities to honor the promises in its express warranty, Apple failed to furnish an effective remedy to Plaintiff and Class members.

88. Apple's failure to provide Plaintiff and Class members with a non-defective replacement device, an effective repair, or a refund of their purchase price breached its obligations under the warranty.

89. As a direct and proximate result of Apple's breaches of express warranty, Plaintiff and Class members have been damaged in an amount to be proven at trial.

**COUNT III**  
**Breach of the Implied Warranty of Merchantability**

90. Plaintiff incorporates by reference all paragraphs of the Complaint as if fully set forth herein.

91. By operation of law, Apple—as a manufacturer of the Apple Watch and as an offeror of the Limited Warranty—impliedly warranted to Plaintiff and Class members that the Watches they were purchasing were of merchantable quality and fit for their ordinary and intended use as durable activity-tracking, smart-watch devices. The Watches were not, however, fit for their ordinary and intended use because the Watches suffer from the Defect described herein.

92. Consumers who did not purchase their Watches directly from Apple are the intended third-party beneficiaries of the written distribution and supply agreements between Apple and its authorized resellers (*i.e.*, Kohl's), and of the implied warranties that attach to those contracts. The retailer sellers were not intended to be the ultimate users of the Watches.

93. Consumers who did not purchase their Watches directly from Apple are also the intended beneficiaries of the Limited Warranty that Apple provided to its authorized sellers with the Watches.

94. Apple impliedly warranted that the Watches were of merchantable quality and fit for such use. This implied warranty included, among other things, a warranty that the Watches and their screens were manufactured, supplied,

distributed, and/or sold by Apple, were reliable, and would not experience premature failure when used in a reasonable and foreseeable manner by consumers.

95. Apple breached the implied warranty of merchantability in connection with its sale and distribution of the Watches. At the point of sale, the Watches—while appearing normal—contained the Defect rendering the Watches defective and unfit for their ordinary and intended purpose. The Watches were defective when they left Apple’s possession and were failure-prone at the point of sale.

96. Had Plaintiff and Class members known that the Watches were defective, they would not have purchased them, or would have paid less for them.

97. Plaintiff and Class members furnished Apple with an opportunity to cure its breach of warranty, and otherwise complied with any and all obligations under the implied warranty of merchantability. Despite knowing the Watches were defective prior to, or concurrent with, their release, Apple has refused to provide Plaintiff and Class members with appropriate warranty relief, leaving them without the functional product they reasonably expected in making their purchasing decisions.

98. Apple’s actions, as complained of herein, breached the implied warranty of merchantability and, as a result, Plaintiff and Class members have sustained damages in an amount to be determined at trial.

**JURY DEMAND**

99. Plaintiff demands trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

FOR THE FOREGOING REASONS, Plaintiff, individually and on behalf of the Class, respectfully requests that the Court certify this action as a Class action, with Plaintiff as Class representative and the undersigned counsel as class counsel, and enter an Order of judgment against Apple in favor of the class that:

- a. Awards actual damages to Plaintiff and the Class to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Apple's unlawful conduct;
- b. Awards restitution and disgorgement of all monies Apple derived from Plaintiff and Class members through the misconduct alleged above;
- c. Awards pre-judgment and post-judgment interest at the maximum allowable rates;
- d. Awards reasonable attorneys' fees and costs;
- e. Temporarily and permanently enjoins Apple from engaging in the unlawful practices alleged herein; and
- f. Orders any such other and further relief as the Court deems just and proper to correct the wrongs done to the class.

Dated: April 1, 2019

SHEPHERD, FINKELMAN,  
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